

TOBACCO PRODUCTS CONTROL ACT

Act No. 83 of 1993

To prohibit or restrict smoking in public places; to regulate the sale and advertising of tobacco products in certain respects and to prescribe what is to be reflected on packages; and to provide for matters connected therewith.

Preamble

ACKNOWLEDGING that tobacco use-

- Is extremely injurious to the health of both smokers and non-smokers and warrants, in the public interest, a restrictive legislation;
- Is a widely accepted practice among adults, which makes it inappropriate to ban completely;

REALISING that the association of smoking with social success, business advancement and sporting prowess through the use of advertising and promotion may have the particularly harmful effect of encouraging children and young people to take up smoking;

CONSIDERING that the extent of the effects of smoking on health calls for strong action to deter people from taking up smoking and to encourage existing smokers to give up smoking; and

RESOLVING to align the health system with the democratic values of the Constitution and to enhance and protect the fundamental rights of citizens by discouraging the use, promotion and advertising of tobacco products in order to reduce the incidence of tobacco-related illness and death.

1. Definitions

In this Act, unless the context otherwise indicates-

"advertisement"

In relation to any tobacco product, means any drawn, still or moving picture, sign, symbol, other visual image or message or audible message aimed at the public and designed to promote or publicise a tobacco product or to promote smoking behaviour and includes the use in any advertisement or promotion aimed at the public of a tobacco product manufacturer's company name where the name or any part of the name is used as or is included in a tobacco product trade mark, and "advertise" has a corresponding meaning;

"Constitution"

Means the Constitution of the Republic of South Africa, 1996 (Act No, 108 of 1996);

"Constituent"

In relation to any tobacco product, means nicotine, tar and any other constituent of a tobacco product or of tobacco smoke which the Minister may by notice in the *Gazette* declare to be a constituent for the purposes of this Act;

"Director-General"

Means the Director-General: Health;

"employed" or "employment"

Means employed or employment as an employee as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No, 75 of 1997);

"local authority"

Means any institution or body established by or under any law with a view to performing local government functions in respect of a particular area or region;

"Minister"

Means the Minister of Health;

"nicotine"

Means nicotine alkaloids;

"officer"

Means an officer in the Department of National Health and Population Development mentioned in section 5;

"organised activity"

- a) Means any activity or event- i) which the public attend or participate in; ii) which is organised for the purposes of entertainment, sport or recreation or for educational or cultural purposes; and iii) where a tobacco product, or brand name, trade mark, logo or company name in relation to a tobacco product, is used in the name of or portrayal of the activity or event; but
- b) Excludes any private activity or event arranged by a manufacturer, importer, distributor or retailer of a tobacco product where only its shareholders or its employees or their spouses or partners attend;

"package"

Means any packing, carton, wrapping or any other container in which tobacco products are generally sold by retail;

"prescribe"

Means prescribe by regulation under this Act;

"private dwelling"

- a) Means any part of- any room or apartment of a building or structure which is occupied as a residence; or
- b) any building or structure or outdoor living area which is accessory to, and used wholly or principally for, residential purposes;

"public place"

Means any indoor or enclosed area which is open to the public or any part of the public and includes a workplace and a public conveyance;

"smoke"

Means to inhale, exhale, hold or otherwise have control over any ignited tobacco product, weed or plant, and "smoked" and "smoking" have corresponding meanings;

"tar"

Means the anhydrous and nicotine-free condensate of the smoke of a tobacco product;

"this Act"

Includes a regulation made under this Act;

"tobacco product"

Means any product manufactured from tobacco and intended for use by smoking, inhalation, chewing, sniffing or sucking;

"trade mark"

Includes- any mark whether registered or registrable for trade purposes or any recognised version thereof that is likely to be taken as, or confused with, that trade mark; ii) certification trade mark or collective trade mark; and iii) 'trade mark' as defined in section 1 of the Trade Marks Act, 1993 (Act No, 194 of 1993); and

"workplace"

- a) Means any indoor or enclosed area in which employees perform the duties of their employment; and
- b) Includes any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment; but
- c) Excludes any private dwelling, and any portion of an area mentioned in paragraph (a) specifically designated by the employer as a smoking area and which complies with the prescribed requirements.

2. Control over smoking of tobacco products

1)

- a) The smoking of tobacco products in any public place is prohibited.
 - b) Notwithstanding the provisions of subsection (1)(a), the Minister may by notice in the *Gazette* declare specified public places permissible smoking areas, subject to any conditions that may be specified in such notices.
 - c) Notwithstanding the fact that a private dwelling is excluded from the definition of "workplace", if a private dwelling is used for commercial child care activities or for schooling the smoking of tobacco products in such dwelling or on the terrain of such dwelling is prohibited, except in an area of the private dwelling which is specifically designated by the employer, owner, tenant or possessor as a smoking area and which complies with the prescribed requirements.
- 2) The Minister may at the request of any local authority, but subject to subsection (3), grant any or all of his or her powers contemplated in subsection (1) to such local authority.
- 3) A power contemplated in subsection (1) shall not be granted to a local authority under subsection (2) in respect of-
- a) A public place owned by the State or which is occupied by officers or employees in the employment of the State; or
 - b) Such other public places or particular kinds of public places as the Minister may determine by notice in the *Gazette*.
- 4) When a local authority issues regulations by virtue of subsection (2), it shall do so by notice in the *Official Gazette*.
- 5) The Minister may issue regulations prescribing conditions to which the exercise of a power by a local authority in terms of, subsection (2) shall be subject.
- 6) A local authority which has made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce the regulations in its area of jurisdiction.

7) A local authority which has not made regulations relating to the control of smoking in public places in terms of this Act shall have the power, duty and obligation to enforce any national regulations in connection therewith in its area of jurisdiction.

3. Advertising, sponsorship, promotion and required information in respect of packages of tobacco products

- 1) No person shall-
 - a) Advertise, including the use of tobacco trade marks, logos, brand names or company names used on tobacco products; or
 - b) Use tobacco trademarks, logos, brand names or company names used on tobacco products for the purposes of advertising any organisation, service activity or event.
- 2) No manufacturer, importer, distributor or retailer of tobacco products shall-
 - a) Organise or promote any organised activity that is to take place in whole or in part in the Republic;
 - b) Make any financial contribution to any organised activity that is to take place, or is taking place, or has taken place in whole or in part in the Republic;
 - c) Make any financial contribution to any person in respect of-
 - i. The organisation or promotion of any organised activity in the Republic by that person;
 - ii. The participation, by that person, in any organised activity that is to take place, or is taking place in whole or in part, in the Republic.
- 3) A retailer of tobacco products may post in accordance with the regulations passed in relation to this Act, signs at the point of sale that indicate the availability of tobacco products and their price.
- 4) No person shall sell or import for subsequent sale any prescribed tobacco product, unless-
 - a) Such product is in a package;
 - b) The package in which the tobacco product is sold bears the prescribed warning concerning the health hazards incidental to the smoking of tobacco products; and
 - c) The quantities of the constituents present in the tobacco product concerned are stated on the package.
- 5) Notwithstanding the provisions of section 3, the Minister may, by regulations, provide for exemptions for unintended consequences or the phasing out of existing sponsorship or contractual obligations.

4. Prohibition of sale of tobacco products to persons under age of 16 years

- 1) No person shall sell or supply any tobacco product to any person under the age of 16 years, whether for his personal use or not.
- 2) [Subsection (2) deleted by s.6 of Act No. 12 of 1999].
- 3) [Subsection (3) deleted by s.6 of Act No. 12 of 1999].

4A. Free distribution and reward prohibited

- 1) No manufacturer, distributor, importer or retailer of a tobacco product shall for free, or at a reduced price, other than a normal trade discount-
 - a) Distribute any tobacco product; or
 - b) Supply any tobacco product to any person for subsequent distribution. No person shall offer any gift; cash rebate or right to participate in any contest, lottery or game, to any person in consideration of the purchase of a tobacco product, or the furnishing of evidence of such a purchase.

5. Restrictions on use of vending machines

- 1) The sale of tobacco products from vending machines shall be restricted to places in which purchases from such machines are inaccessible to persons under the age of sixteen years.
- 2) It shall be the responsibility of any person during such time as he or she is responsible for or has control of the premises in which any vending machine is kept to ensure that no person under the age of sixteen years makes use of any such machine.
- 3) The Director-General may in writing direct the owner of the vending machine in question or the person in control thereof-
 - a) To take such precautionary measures as are specified in the direction to prevent the vending machine being used by persons under the age of 16 years; or
 - b) To remove the vending machine from the premises within the period specified in the direction.
- 4) [Subsection (4) deleted by s.8 of Act No. 12 of 1999].

6. Regulations

- 1) The Minister may make regulations regarding-
 - a) The manner and form in which information contemplated in section 3 is to be reflected on the package of a tobacco product or in which it is to appear in any advertisement of such product;
 - b) The manner or method of determining the quantities of hazardous constituents in tobacco products;
 - c) The properties of a tobacco product, the claims in respect of such product and the representations in respect of the use thereof that may not appear in any advertisement;
 - d) The returns, reports and other information to be furnished to the Director-General by manufacturers and importers of tobacco products;
 - e) Any other matter required or permitted to be prescribed in terms of a provision of this Act to achieve the objects of this Act.
- 2) Regulations made under subsection (1)(b) may prescribe for the determination of the quantities of hazardous constituents in tobacco products any manner or method set out in a publication which in the opinion of the Minister is generally recognized as authoritative.
- 3) The Minister shall, not less than three months before issuing any regulation under this Act, cause a draft of the regulation to be published in the *Gazette*, together with a notice declaring his intention to issue such a regulation and inviting interested persons to furnish him with any comments thereon or representations in connection therewith within a specified period.
- 4) The provisions of subsection (3) shall not apply in respect of-
 - a) A regulation which, after the provisions of the said subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him in pursuance of the notice published in terms of the said subsection;
 - b) Any regulation in respect of which the Minister is of the opinion that it is in the public interest that it be issued without delay.

7. Offences and penalties

- 1) Any person who contravenes or fails to comply with any notice issued in terms of section 2(1) shall be guilty of an offence and liable on conviction to a fine not exceeding R200 or to such penalties as may be determined.
- 2) Any person who contravenes or fails to comply with the provisions of section 4(1) or 5 shall be guilty of an offence and liable on conviction to a

fine not exceeding R10 000 or to such imprisonment as may be determined.

- 3) Any person who contravenes or fails to comply with the provisions of section 3 or 4A or any notice issued in terms of section 3A shall be guilty of an offence and liable on conviction to a fine not exceeding R200 000 or to such imprisonment as may be determined.

8. Short title and commencement

- 1) This Act shall be called the Tobacco Products Control Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- 2) Different dates may under subsection (1) be fixed in respect of different provisions of this Act.